IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15308 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMINABEN ALI MOHEMMED DHUNNA (MEMAN), ADM. OF BIBI MAZ DARG

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15308 of 2003

MR MA KHARADI for Petitioner No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondents Nos. 1-3

MR RM CHHAYA for Respondent No. 4

..... for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. The petitioner is the administrator of Bibima ni Dargah. According to the petitioner, Bibima's Dargah has been registered as a wakf with the Gujarat State Wakf Board.

2. The petitioner has been aggrieved by reconstitution of Final Plot No. 510 made by the respondent authorities in pursuance of Bhuj Town Planning Scheme No. 2.

3. The facts giving rise to the present petition, in a nutshell, are as under:

4. Dargah of Bibima was situated at Survey No. 3204, which has been numbered as original plot No. 1221 in pursuance of the scheme. According to the draft town planning scheme, the dargah was to be retained at the same place by allotting Final Plot No. 525 in lieu of original plot no. 1221. As the Final Plot was to be allotted at the place where the original plot was situated, the petitioner did not make any representation. However, when the preliminary scheme was made, a change was effected, and instead of Final Plot No. 525, Final Plot No. 510 was allotted, in lieu of original plot No. 1221.

5. The aforestated change had been effected for the reason that the dargah was forming part of a 6 meter wide road and it was felt by the Town Planning Officer that if the dargah was on the road, it would create traffic hazards, especially when the dargah was near a school premises. Moreover, in the vicinity there was a community hall, a shopping complex and two hotels. Looking to the said fact, it was decided to allot Final Plot No. 510 instead of Final Plot No. 525. As a result of the change effected in the preliminary scheme, the petitioner will have to shift the dargah to Final Plot No. 510.

6. The petitioner has been aggrieved for the reason that the petitioner, the administrator of the dargah, did not get an opportunity to make a representation against the proposed change. As the said grievance appeared to be genuine, during the pendency of this petition, respondent no. 3 was orally directed to consider the petitioner's case and for that purpose, the petitioner had attended the office of respondent no. 3 on 10th February, 2003 and had made a representation against allotment of Final Plot No. 510 in lieu of original plot no. 1221. It was represented before respondent no. 3 that because of allotment of Final Plot no. 510 at a

different place, the dargah will have to be shifted and that would not be proper because the dargah is a religious place visited by Muslims as well as Hindus. Moreover according to the representation made by the petitioner, the proposed road was wide enough to permit a truck to pass through the road even if the dargah remained at the same place. In the circumstances, a request was made for not effecting any change.

7. After considering the representation made by the petitioner, respondent no. 3 took a decision, which is annexed to the affidavit-in reply dated 11th August, 2004. He has recorded the reasons for which the representation made by the petitioner had to be turned down.

8. In view of the aforestated development, which had taken place during the pendency of this petition, the grievance of the petitioner with regard to not getting an opportunity to represent her case before respondent no. 3 does not survive.

9. Learned advocate Shri M.A. Kharadi appearing for the petitioner has submitted that the change effected by the respondent authorities is not proper especially in view of the fact that the dargah is approximately 400 years old, where a very pious saint, named, Bibima, had been buried. It has been submitted that normally such religious places should not be disturbed by the authorities appointed under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act") It has been submitted that if the dargah is shifted to a different place, religious feelings of not only Muslims but even of Hindus would be adversely affected. It has been further submitted that, because of shifting of the dargah, fundamental right of several devotees of Bibima would be violated. He has also submitted that even if the dargah is not shifted, there would be sufficient space on the road and the existing traffic would not be hindered. It has been also submitted by him that in many developed cities, temples/mazjids/dargahs are still situated on roads, which have not been disturbed and, therefore, this dargah should also not be shifted.

10. In pursuance of notice issued by this Court, learned Advocate General Shri S.N. Shelat with learned A.G.P. Ms Maithili Mehta have appeared for respondent nos. 1, 2 and 3, learned advocate Shri R.M. Chhaya has appeared for respondent no. 4, whereas nobody has appeared for respondent no. 5.

11. On behalf of the respondents it has been submitted that it is not possible and not in the interest of pubic at large to have a dargah on the main road having width of 6 meters. It has been submitted by them that almost half of the road has been covered by the premises of the dargah and the road for vehicular traffic would be only 3 meters wide if the dargah is not shifted to a different place. It has been submitted that the road, where the dargah is situated, is having heavy vehicular traffic for the reason that the dargah is very near to a school premises. Moreover, there is a community hall in the vicinity, where social functions take place and due to the said reason, traffic is more on the said road. In addition thereto, it has been submitted that there is a commercial complex, having several shops, and there are two hotels, which are just opposite to the dargah. For the aforestated reasons, there is more vehicular traffic and if the dargah is not shifted elsewhere, the chances of accident are many.

12. It has been further submitted that normally such religious places should not be on the main road because several persons attend such places for offering their prayers. In addition to the school and the commercial establishments referred to hereinabove, several persons would be visiting the dargah and that would add to the vehicular traffic. According to the learned advocates, it would be in the interest of the residents of Bhuj and even in the interest of those offering prayer at the dargah, that the dargah is shifted because they also would be passing through the said road and would be prone to accident which might take place because of heavy traffic.

13. For the aforestated reasons, it has been submitted on behalf of the respondents that respondent no. 3 has rightly decided to shift the dargah to a place, which is not much away from the place where the dargah is presently situated. The distance of 40 meters cannot be said to be a big distance and it is possible to shift the dargah from one place to another. It has been submitted that the action taken by the respondent authorities is not only in accordance with law, but is also in the interest of public at large.

14. For the aforestated reasons, it has been submitted on behalf of the respondents that the petition should be rejected as no legal or fundamental right guaranteed to the petitioner has been violated.

15. I have heard the learned advocates and have also perused the map showing the place, where the dargah is situated. Looking to the fact that the dargah is on the main road having width of 6 meters and as the dargah itself occupies half of the width of the road, I do not find any fault or mistake on the part of the respondent authorities while deciding to shift the dargah to a different place. It is pertinent to note that the Final Plot, which is allotted for dargah, is hardly 40 to 50 meters away from the place of the present dargah. Upon hearing the learned advocates for the respondents, it appears that it is possible to shift the dargah. If the dargah is allowed to be retained at the place where it is presently situated, it might become cause for several accidents especially when the dargah abuts the school premises. It is not unknown that school going children are very carefree in their behavior and if the road abutting the school is narrow, it might result into accidents.

16. In addition to the school, it appears from the map that a community hall, a commercial complex and hotels are situated in the vicinity of the dargah. In addition to this, there would be many persons visiting the dargah for offering prayers, which would add to the vehicular traffic.

17. For the aforestated reasons, the respondent authorities decided to allot another Final Plot for the dargah at a place, which is hardly 40 to 50 meters away from the present place. It cannot be said that the respondent authorities have acted arbitrarily or illegally. On the contrary, it appears that care should have been taken while preparing the draft scheme, but though as per the draft scheme, Final Plot was to be allotted for the dargah at the same place, while making the preliminary scheme, the mistake has been rightly rectified.

18. For the aforestated reasons, it is clear that the action taken by the respondent authorities is in fact quite proper and in larger interest of the society and no legal or fundamental right guaranteed to the petitioner has been violated because of the impugned decision.

19. For the aforestated reasons, I do not see any illegality committed by the respondent authorities and, therefore, the petition is rejected. Notice is discharged with no order as to costs.

20. Looking to the fact that the dargah will have to

be shifted, in the interest of justice, it is directed that status-quo shall be maintained for four weeks form today so that in the meantime, appropriate steps can be taken by the petitioner for shifting the dargah to the newly allotted Final plot.

(A.R. DAVE, J.)

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